



Modified PTO/SB/33 (10-05)

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Docket Number

Q74306

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450 Alexandria, VA 22313-1450

Application Number

10/684,464

Filed

October 15, 2003

First Named Inventor

Jean-Claude HAUER

Art Unit

3635

Examiner

Basil S. Katcheves

WASHINGTON OFFICE

**23373**

CUSTOMER NUMBER

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal

The review is requested for the reasons(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

☒ I am an attorney or agent of record.

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March 23, 2006

Date

PRE-APPEAL BRIEF REQUEST FOR REVIEW  
U.S. Appln. No. 10/684,464  
Atty. Docket No. Q74306



**PATENT APPLICATION**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of

Docket No: Q74306

Jean-Claude HAUER, et al.

Appln. No.: 10/684,464

Group Art Unit: 3635

Confirmation No.: 4684

Examiner: Basil S. Katcheves

Filed: October 15, 2003

For: CLOSING DEVICE

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

**MAIL STOP AF - PATENTS**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Pursuant to the new Pre-Appeal Brief Conference Pilot Program, and further to the Examiner's Final Office Action dated November 23, 2005, Applicant files this Pre-Appeal Brief Request for Review. This Request is also accompanied by the filing of a Notice of Appeal.

Applicant turns now to the rejections at issue:

Claims 1-15, 17-21, 23 and 25-29 are pending in the application.

**Claim Rejections**

Claims 1, 3-9, 12-14, 17, 19, 21, 23-25 and 27-29 stand rejected under 35 U.S.C. §102(b) as being anticipated by Lovatt (U.S. Patent No. 2,012,885).

**A) Claims 1 3-9, 12-14, 17, 19, 21, 23-25**

Claim 1 is an independent claim and claims 3-9, 12-14, 17, 19, 21, 23-25 depend from claim 1. Applicant respectfully traverses the rejection of these claims.

In the Advisory Action dated March 6, 2006, the Examiner provides no substantive response to the arguments included in the Response filed February 23, 2006. Accordingly, Applicant submits that the above claims are allowable at least for the reasons presented in that Response.

Particularly, claim 1 recites a frame hinge knuckle and a plug inserted in a recess of the frame hinge knuckle. The Examiner asserts that Lovatt block 43 constitutes the claimed frame hinge knuckle. However, the Lovatt block 43 is secured to the cover and is not part of the frame (see Lovatt, page 2, second column, lines 30-36). Because the Lovatt block 43 is not part of the frame, it cannot be the claimed frame hinge knuckle.

Furthermore, the Lovatt hook 48 (the Examiner's alleged plug) is part of the block 43 (the alleged frame hinge knuckle). The plug recited in claim 1 is inserted into a recess of the frame hinge knuckle. Since the Examiner's alleged plug 48 is part of the alleged frame hinge knuckle 43, it is not inserted into a recess of frame hinge knuckle 43 as claimed. Therefore, the Lovatt hook 48 cannot constitute the plug as asserted by the Examiner.

Finally, the Examiner still fails to clarify the contradictions in the rejection. For example, because the Examiner initially identifies element 33 as the recess, but later states that element 50

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is the recess (*see* pages 3 and 4 of the Office Action dated March 28, 2005) it is impossible to tell what the Examiner considers the claimed recess.

Accordingly, Applicant submits that claim 1 is allowable over Lovatt and claims 3-9, 12-14, 17, 19, 21, 23-25 are allowable at least because of their dependency.

As argued on pages 3 and 4 of the Response filed February 23, 2006, the Examiner also makes improper assertions with regard to several of the dependent claims. Particularly, the Examiner asserts that the Lovatt cover (specifically the hook 48) helps to eject foreign matter through the drain 50 (*see* the Response to Arguments section on page 3 of the Final Office Action dated November 23, 2005). Yet, the Examiner provides absolutely no basis for this assertion. Lovatt never describes the hook 48 as ejecting foreign matter. In fact, as explained in the February 23 Response, Lovatt teaches a structure in which for foreign matter can pass through the drain 50 without assistance from the cover or hook 48. Lovatt teaches that very little water or foreign matter can enter, but that if it does, it will flow through vent opening 50 located at the bottom of the socket (*see* Lovatt page 2, second column, lines 47-50). Therefore, even if there were any debris or water, it could merely flow through hole 50 merely because of gravity, without any assistance from the cover. Lovatt simply fails to teach that the hook 48 ejects foreign matter and it is not inherent because of the structure of Lovatt. Accordingly, Applicant submits that several of the dependent claims are allowable at least because Lovatt does not meet the structural limitations of the dependent claims as asserted by the Examiner in the November 23 Final Office Action.

**B) Claims 27-29**

Claim 27 is an independent claim and claims 28-29 depend from claim 29. Applicant respectfully traverses the rejection of these claims.

With regard to independent claim 27, the Examiner asserts that Lovatt element 28 constitutes the claimed plug which substantially seals off an inner side from an outer side. However, Lovatt element 28 cannot be the claimed plug at least because it does not substantially seal as the claimed plug does. Element 28 is provided with a vent opening 50 which is specifically designed to allow water or foreign matter to flow through (see page 2, second column, lines 47-50). As shown in Fig. 5, element 28 is shaped so as to funnel any foreign matter towards the vent hole 50. The foreign matter would then flow through this hole provided in element 28. Because it is provided with a vent hole 50, element 28 is not a plug which substantially seals, as is recited in claim 1.

Claims 28 and 29 depend from claim 27 and are allowable at least because of their dependency. Claims 28 and 29 are also allowable for additional reasons. For example, with regard to claim 28, the Examiner asserts that element 28 is inherently capable of blocking gravel. However, based on the structure explained above, element 28 would not inherently block gravel. Instead, even if gravel would enter this area, it would pass through the vent hole 50 in element 28; it would not be blocked by element 28.

With regard to claim 29, the Examiner asserts that the Lovatt cover aids in the ejection of gravel. Also, the Examiner's assertion that the cover pushes gravel towards drain 50 is simply

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unsupported (*see* the Examiner assertion on page 2 of the November 23, Office Action). As discussed above, Lovatt never teaches that the cover pushes gravel towards vent hole 50 and it is certainly not inherent that the cover would push gravel through vent hole 50.

In view of the above arguments, Applicant submits that claims 27-29 are also allowable over Lovatt.

**Claim Rejections - 35 U.S.C. §103**

Claims 2, 10, 11, 15, 18, 20 and 26 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Lovatt. Even if it were appropriate to modify Lovatt as suggested by the Examiner, the modifications would not correct the above-noted deficiencies of Lovatt with respect to claim 1. Accordingly, even the modified Lovatt would also be deficient with regards to claims 2, 10, 11, 15, 18, 20 and 26, which depend from claim 1.

**Conclusion**

In light of the above, Applicant respectfully requests that the Examiner's rejections under 35 U.S.C. § 102 and 35 U.S.C. § 103 be withdrawn, and the application be passed to issue.

Respectfully submitted,



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